INDO-AUSTRALIAN TRADING CO. LTD. v. HIN ANN HUAY & ORS.

[O. C. J. (Taylor J.) November 11, 1954]

[Singapore — Suit No. 824 of 1952]

Societies Ordinance (S.S. Cap. 217) — Capacity of registered association — Tenancy — Equitable relief.

An association registered under the Societies Ordinance is a "person" of limited capacity, judicially resembling a real person who is an infant.

The purported grant of a monthly tenancy to such a society, by its registered name, operates as an agreement to grant a tenancy to trustees for the society. In the absence of circumstances disqualifying the society for equitable relief, a purchaser of the property, with notice, will be compelled to grant a legal tenancy to trustees for the Society.

Case referred to:—

(1) *Walters v. Northern Coal Mining Co.* 43 E.R. 1015.

ACTION.

The plaintiff bought the property subject to the tenancy of the Association. They and their legal advisers continued for some months in the belief that the tenancy was legal and their only objection was to the difficulty in finding authorised representatives with whom to deal. Later they discovered the legal flaw and founded this action on it. There had been one or two delays in the payment of rent, but these were not so serious as to disqualify the Association for discretionary relief. An interlocutory judgment dated June 21, 1954 was made and reported at p. 163, *ante*.

L. A. J. Smith for the plaintiffs.

F. R. N. H. Massey for the defendants.

Cur. Adv. Vult.

Taylor J. : — Following what may now be called the interlocutory judgment* of 21st June, the defendants paid into Court the sum required, and filed amended pleadings counter-claiming specific performance of the agreement held to have resulted in equity from the letting to the Association. The plaintiffs filed a defence to the counterclaim and the suit was set down for further hearing. No further evidence was adduced by either side.

The plaintiffs plead that they had no express notice of the agreement. In the absence of any evidence of special circumstances the Court is entitled to presume that the plaintiffs made the ordinary enquiries before they bought the property. Immediately after completion they wrote to the defendants (A.B. p. 11) claiming rent and asking them to "enter into a new tenancy". It is therefore clear, not only that the plaintiffs knew the facts but also that at that stage and for several months afterwards, they and their then solicitor believed that the apparent tenancy was valid.

The main argument for the plaintiffs was that equity will not decree specific performance of an agreement to grant a term which has expired. The authorities do not support the proposition in that unqualified form. Great emphasis was laid on *Walters v. Northern Coal Mining Co.*[1], but that case is readily distinguishable on the facts. There, the landlord sought to compel execution of a lease, the intended term of which had expired, not because either party wished to enforce the lease as such, by occupation, but solely to enable the plaintiffs to sue on the covenants. That was long before fusion under the Judicature Acts. The Court held that the plaintiffs had other and sufficient remedies. Here the claimants genuinely seek enforcement of the agreement so that they can continue in actual occupation and they have no other remedy.

Moreover in order to found the argument, it is necessary for the plaintiffs to show that the intended term had expired. Their contention is that if it was agreed to grant a monthly tenancy, that tenancy was terminated by the letter of 27th May, 1952. That letter was in the form of an ordinary legal notice to quit, with a parenthesis denying the tenancy. On its face it is inconsistent. If no tenancy exists the form of the notice is inappropriate. The construction most favourable to the owner is: — "We deny that you are legal tenants but in case it should be held that you are, we hereby give you formal notice to quit. In any event we require you to vacate."

As there was no legal term in existence the letter could not and did not put an end to a term. Its effect depends on the nature of the relation between the parties at that date. They were not in any relation arising from tenure or legal contract. There never was any actual agreement between them. The only actual agreement was the agreement with the previous owners. The plaintiffs came on to the scene later as purchasers, with notice.

It is well settled that purchasers of land in which a party other than the vendor has an interest, are trustees for that party of all the rights of which they have notice. The attempted letting to the Association operated as an agreement to grant a tenancy to trustees for the Association. The plaintiffs therefore became constructive trustees for the Association and were bound in equity to grant a tenancy to express trustees when appointed. The letter amounted to a repudiation of this equitable obligation to create a legal term.

* See report at p. 163, *ante*.

Other arguments advanced by the plaintiffs may be mentioned briefly. They objected that the right to sue for specific performance does not arise unless and until performance of the contract has been requested and refused. No authority for this proposition was cited. It is a technical point to which the defendants suggested several technical answers. It is not necessary to discuss these here because, in my view, the point affects costs only.

The plaintiffs raised the question of limitation. This was debated on its merits and dropped. The position is that limitation was never actually pleaded and no formal application to amend was made. The point was considered and abandoned.

The plaintiffs also said that the rights of the parties, particularly with regard to the notice of 27th May, 1952, must be ascertained without reference to the Control of Rent Legislation. This proposition, in that broad and general form, is not supported by the authorities cited, but it is unnecessary to examine them because, even if a rule to that effect existed, it would not be infringed in this case. That legislation is not referred to or relied on for any point decided either now or in the judgment of 21st June. In my view both parties are equally actuated by considerations arising from that legislation and it would not be practicable, or right, for the Court to ignore its existence. I have, however, decided the questions at issue on much older laws and principles and leave the parties to work out the consequences for themselves.

Counsel for the plaintiffs remarked that there was no precedent for amending pleadings after the case had proceeded to trial and judgment had been reserved, and that the Court would not have gone so far had the case not involved a large building and a great number of children. The former point affects only costs. The latter point is completely misconceived. It is relatively rare for a large building to be the subject of a suit such as this. On the contrary it is remarkable how frequently very small properties are the subject of litigation, so lengthy and costly as to be out of all proportion to their apparent value. If a two roomed hut had been let to a young widow, herself still legally an infant, with a child, and a purchaser had sought to eject her, the case would have raised nearly all the same issues, and it would have received exactly the same measure of care. It is true that the Association, though legally a "person under disability," does not consist of persons who are infants in fact, and that is a point to be considered in the exercise of discretion. I would not assent to the proposition that such an association should be treated generally as an infant.

The gist of the case is this. The plaintiffs bought the property subject to the tenancy of the Association. They and their legal advisers continued for some months in the belief that the tenancy was legal and their only objection was to the difficulty in finding authorised representatives with whom to deal. Later they discovered the legal flaw and founded this action on it. There had been one or two delays in the payment of rent, but these were not so serious as to disqualify the Association for discretionary relief.

On the whole case I am clearly of opinion that the counterclaim succeeds in substance. I do not think that specific performance of a contract is the apt form but specific equitable relief to a similar effect can be given.

The defendants must, within one month, appoint trustees to hold a legal tenancy of the building on behalf of the Association.

For this purpose "trustees" mean at least two and not more than four real persons, or a trust corporation, nominated by the defendants with the consent of the plaintiffs or, failing agreement, by the Registrar.

The defendants must pay by 23rd December, rent up to the end of the year at $125 p.m. plus a deposit of $125, taking credit for the amount now in Court and for any existing deposit.

Subject to the foregoing, the plaintiffs must grant a legal tenancy to the trustees, from 1st January next, on the same terms and conditions as were expressed and implied as between the vendors and the Association.

I will hear argument as to costs.

Order accordingly.

[NOTE: After argument the Parties agreed that there should be no order as to costs.]

Solicitors: *Donaldson & Burkinshaw; Allen & Gledhill.*

S. RM. MEYAPPA CHETTIAR v. LIM LIAN KOO

[C. A. (Mathew C.J. (F.M.), Murray-Aynsley C.J. (S) and Knight J.) October 15, 1954]

[J. B. — Civil Appeal No. 31 of 1954]

Contracts (Malay States) Ordinance, 1950, s. 149 — Whether applicable in a case where the agent contracts in his personal capacity.

In this case one Palaniappa Chettiar, the attorney of Somasundaram Chettiar entered into an agreement with the respondent under which Palaniappa Chettiar handed over to the respondent, a certain piece of land in Batu Pahat, the property of his principal, in consideration of the sum of $7,000 and agreed "that upon the